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General's Credibility Attacked

CBS Lawyer Cites 'Contradictions'

By Eleanor Randolph
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NEW YORK, Dec. 5—CBS attorney David Boies said today that retired general William C. Westmoreland had contradicted himself or his former officers in Vietnam 20 to 25 times during nine days of testimony in his libel suit against CBS.

In one of the "minisummations" that U.S. District Court Judge Pierre N. Leval has allowed in this long and complicated libel case, Boies also said that "even if you were to assume that that story told by [Westmoreland] for the first time here at trial was true, there is no way CBS could be charged with predicting... [the story he told CBS originally] was not true."

Boies' effort to attack the general's credibility came after Westmoreland's attorney, Dan M. Burt, in his own review of the trial to date, said that 16 of the general's witnesses "have demonstrated through their testimony that the CBS broadcast is untrue...."

Burt said the witnesses, including high-ranking military and governmental officials of the Vietnam era, had demonstrated "that Gen. Westmoreland did not suppress information from his superiors...."

Westmoreland sued CBS for \$120 million after a 1982 broadcast charged that he was part of a "conspiracy" to keep a lid on enemy-troop data in order to maintain support for the war in 1967.

Although the broadcast accused Westmoreland and others of suppressing the higher enemy-troop numbers from the public, the press, Congress and President Lyndon B. Johnson, the general's lawyers are arguing only that he was defamed by the accusation that he deceived his superiors, including Johnson.

The case, which is expected to last into February, took a somewhat unusual turn today as Leval began to question whether Westmoreland is technically a "public figure"—an important issue in libel law.

Since a U.S. Supreme Court ruling in 1964, public figures in libel cases against the press have been required to prove not only that the article or broadcast in question is untrue, but also that the reporters involved had a reckless disregard for whether it was true.

Leval called the general back to the stand briefly today to ask him what a military officer's options were when he was asked to take a command like that of commander of U.S. ground forces in Vietnam.

Westmoreland said that if he wanted to refuse such a post, a man of his rank could ask for reconsideration; if that failed, he probably would have to resign or retire.

At a "sidebar" conference out of the jury's hearing, lawyers for both sides made it clear that they did not understand why the judge was asking such questions. Leval said he was concerned about whether the general was a reluctant public figure.

Leval told them that CBS lawyers had argued that, as the judge put it, "Gen. Westmoreland had voluntarily put himself in the position of this office, and as a result had some kind of obligation to bear the vicissitudes that might come from public press commentary on his performance of the office."

"And that's why I was asking the questions with respect to exploring as a legal matter and as a practical matter, what degree of choice one has in accepting that kind of military assignment," Leval said.

Boies then told the judge that if he had known the reasons behind his questions, he would have objected.

Special correspondent John Kennedy contributed to this report.